

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LAUSTEVEION JOHNSON,

Plaintiff,

vs.

JENNIFER NASH, *et al.*,

Defendants.

3:10-cv-00197-RCJ-VPC

ORDER

Plaintiff has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 and an application to proceed *in forma pauperis*. Plaintiff has also filed a motion to amend the complaint.

I. In Forma Pauperis Application (Docket #1)

Based on the information regarding plaintiff's financial status in the application to proceed *in forma pauperis*, the Court will grant plaintiff leave to proceed *in forma pauperis*, but will require plaintiff to pay an initial installment of the filing fee pursuant to 28 U.S.C. §1915. The grant of *in forma pauperis* status adjusts the amount of the filing fee that plaintiff must *prepay* -- plaintiff will be required to prepay an initial installment of **\$37.17**, instead of having to prepay the full \$350 filing fee for this action. The entire \$350 filing fee will, however, remain due from plaintiff, and the institution where plaintiff is incarcerated will collect money toward the payment of the full filing fee when petitioner's institutional account has a sufficient balance, pursuant to 28 U.S.C. §1915. The

1 entire \$350 filing fee will remain due and payable, and will be collected from plaintiff's institutional
2 account regardless of the outcome of this action.

3 **II. Original Complaint and Motion to File Amended Complaint**

4 Plaintiff submitted his original civil rights complaint on April 7, 2010. (Docket #1-1
5 and #1-2). Plaintiff's original complaint was not submitted on the proper complaint form. The
6 Local Rules of Court require plaintiffs appearing in *pro se*, such as this plaintiff, to file their
7 complaint on the Court's approved form. Local Rules of Special Proceedings 2-1("[a] civil rights
8 complaint filed by a person who is not represented by counsel shall be on the form provided by this
9 court."). The Court will provide plaintiff with the court-approved form for filing a *pro se* civil rights
10 complaint.

11 On September 23, 2010, plaintiff filed a motion for leave to file an amended
12 complaint. (Docket #5). Plaintiff seeks file an amended complaint with additional factual
13 allegations and additional claims. Pursuant to Federal Rule of Civil Procedure 15(a), plaintiff may
14 amend his complaint once as a matter of course, without seeking leave to amend. Fed. R. Civ. P.
15 15(a). Plaintiff is granted leave to file an amended complaint, as specified below.

16 In filing an amended complaint, plaintiff must use the court-approved civil rights
17 complaint form. Plaintiff is informed that the amended complaint supercedes the original complaint,
18 and therefore must be complete in itself. See *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896
19 F.2d 1542, 1546 (9th Cir. 1990). "All causes of action alleged in an original complaint which are not
20 alleged in an amended complaint are waived." *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987)
21 (citation omitted). Therefore, the amended complaint must contain all claims, defendants, and
22 factual allegations that plaintiff wishes to pursue in this lawsuit.

23 **III. Conclusion**

24 **IT IS THEREFORE ORDERED** that plaintiff's application to proceed *in forma*
25 *pauperis* (Docket #1) is **GRANTED**. Plaintiff **LAUSTEVEION JOHNSON, #82138**, will be
26 permitted to maintain this action without prepayment of the full filing fee. However, plaintiff must

1 pay an initial installment of the filing fee in the amount of **\$37.17**. Plaintiff will not be required to
2 pay fees or costs, other than the filing fee, or give security therefor. This order granting *in forma*
3 *pauperis* status shall not extend to the issuance and service of subpoenas at government expense.

4 **IT IS FURTHER ORDERED** that plaintiff shall have **thirty (30) days** from the
5 date of entry of this order to have the initial installment of the filing fee, in the amount stated above,
6 sent to the Clerk in the manner described below. Failure to do so may result in the dismissal of this
7 action.

8 **IT IS FURTHER ORDERED** that the Clerk shall **SEND** plaintiff two copies of this
9 order. Plaintiff must make the necessary arrangements to have one copy of this order, attached to a
10 check in the amount of the initial installment of the filing fee, sent to the Court, by sending a copy of
11 the order with a "brass slip" to Inmate Services for issuance of the check.

12 **IT IS FURTHER ORDERED** that, pursuant to 28 U.S.C. §1915, as amended by the
13 Prisoner Litigation Reform Act of 1996, the Nevada Department of Corrections shall pay the Clerk
14 of the United States District Court, District of Nevada, 20% of the preceding month's deposits to
15 plaintiff's account (in months that the account exceeds \$10.00), until the full \$350 filing fee has been
16 paid for this action. **The Clerk shall send a copy of this order to Albert G. Peralta, Chief of**
17 **Inmate Services, Nevada Department of Prisons, P.O. Box 7011, Carson City, NV 89702.**

18 **IT IS FURTHER ORDERED** that, even if this action is dismissed, or is otherwise
19 unsuccessful, the full filing fee shall still be due, pursuant to 28 U.S.C. §1915, as amended by the
20 Prisoner Litigation Reform Act of 1996.

21 **IT IS FURTHER ORDERED** that plaintiff's original complaint (Docket #1-1 and
22 #1-2) is **DISMISSED**, with leave to amend, as it was not submitted on the court-approved civil
23 rights complaint form.

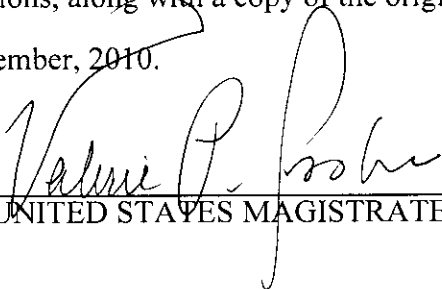
24 **IT IS FURTHER ORDERED** that plaintiff's motion for leave to file an amended
25 complaint (Docket #5) is **GRANTED**. Plaintiff **SHALL FILE** an amended complaint, within **forty-**
26 **five (45) days** of the date of entry of this order. Plaintiff must use the court-approved civil rights

1 complaint form for his amended complaint. The amended complaint must be a complete document
2 in and of itself, and will supersede the original complaint in its entirety. Any allegations, parties, or
3 requests for relief from prior papers that are not carried forward in the amended complaint will no
4 longer be before the Court. If plaintiff does not file an amended complaint, this action may be
5 dismissed.

6 **IT IS FURTHER ORDERED** that plaintiff shall clearly title the amended complaint
7 as such by placing the words "**FIRST AMENDED**" immediately above "Civil Rights Complaint
8 Pursuant to 42 U.S.C. § 1983" on page 1 in the caption, and plaintiff shall place the case number
9 **3:10-cv-00197-RCJ-VPC** above the words "FIRST AMENDED" in the space for "Case No."

10 **IT IS FURTHER ORDERED** that the Clerk shall send plaintiff a blank section
11 1983 civil rights complaint form with instructions, along with a copy of the original complaint.

12 Dated this 28th day of September, 2010.

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15 UNITED STATES MAGISTRATE JUDGE
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